



DAC / JFW

PATENT
Case: JB01337K**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

LEE *et al.*

For:

PEGYLATED INTERLEUKIN-10

Application No.: 09/967,223

Filed: September 28, 2001

Examiner: E. WEBMAN

Group Art Unit: 1616

Confirmation No.: 9381

Date: January 5, 2006

Schering-Plough Corporation
Kenilworth, NJ 07033-0530Mail Stop: ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**APPLICATION FOR PATENT TERM ADJUSTMENT**
UNDER 37 C.F.R. § 1.705

Sir:

Applicants request reconsideration of the patent term adjustment of zero days indicated in the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b), which was attached to the October 6, 2005 Notice of Allowance in the above-identified application. Applicants calculate the term adjustment to be **137 days**.

In accordance with 37 C.F.R. § 1.702, the above-identified application was filed after May 29, 2000 and, therefore, is eligible for patent term adjustment under 35 U.S.C. § 154(b).

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The issue fee is being paid concurrently herewith. Thus, this request for reconsideration is filed no later than payment of the issue fee, in accordance with 37 C.F.R. § 1.705(b).

Applicants have provided for payment of the fee set forth in 37 C.F.R. § 1.18(e), as required by 37 C.F.R. § 1.705(b)(1).

The statement of facts regarding the correct patent term adjustment, as required by 37 C.F.R. § 1.705(b)(2), is as follows:

- (i) Applicants filed the above-identified application on September 28, 2001. The first office action (a restriction requirement) was mailed on February 26, 2003. Therefore, the Office failed to mail a notification under 35 U.S.C. § 132 or notice of allowance not later than fourteen months after the application filing date, as required by 37 C.F.R. § 1.702(a)(1), resulting in **90 credit days** [37 C.F.R. § 1.703(a)(1)].
- (ii) Applicants filed a response to the restriction requirement on March 18, 2003. The Office mailed a non-final rejection on June 24, 2003. Applicants filed a response to the non-final rejection on September 26, 2003. Thus, applicants failed to reply to the rejection within three months after the rejection mailing date, as required by 37 C.F.R. § 1.704 (b), resulting in **2 debit days**.
- (iii) The Office mailed a non-final rejection on January 27, 2004. Thus, the Office failed to respond to a reply under 35 U.S.C. § 132 not later than four months after the date on which the reply was filed, as required by 37 C.F.R. § 1.702(a)(2), which results in **1 credit day** [37 C.F.R. § 1.703(a)(2)].
- (iv) Applicants filed a response to the non-final rejection on April 27, 2004. The Office mailed a notice of informal or non-responsive amendment on June 6, 2005. Applicants filed a response to the

notice on June 29, 2005. Under 37 C.F.R. § 1.704(c)(7), this results in **428 debit days**.

- (v) The Office mailed a notice of allowance on October 6, 2005. According to 37 C.F.R. § 1.702(b), the term of the original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed, which date was September 28, 2001. No time was consumed by continued examination, an interference proceeding, imposition of a secrecy order, review by the Board of Patent Appeals and Interferences or delay in processing of the application requested by the applicants for the above-identified application [37 C.F.R. § 1.702(b)]. Given that the projected issue date of the above-identified application is April 18, 2006, applicants are due **567 credit days**. If the application issues earlier or later than April 18, 2006, then the exact number of credit days will be fewer or greater, respectively.
- (vi) The longest of the three overlapping credit-day periods discussed above is **567 days**. The sum of the two debit-day periods discussed above is **430 days**. Accordingly, under 37 C.F.R. § 1.703(f), the patent term adjustment is 567 days less 430 days, totaling **137 days**.
- (vii) The patent is not subject to a terminal disclaimer [37 C.F.R. § 1.705(b)(2)(iii)].
- (viii) There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination as set forth in 37 C.F.R. § 1.704 [37 C.F.R. § 1.705(b)(2)(iv)].

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A Fee Transmittal Form is enclosed herewith authorizing the fee of \$200.00 as set forth in 37 C.F.R. § 1.18(e) and any additional fees to be charged to our Deposit Account. Any refund in fees may be credited to the same Deposit Account.

January 5, 2006
Schering-Plough Corporation
2000 Galloping Hill Road
Patent Department, K-6-1, 1990
Kenilworth, NJ 07033
Tel: (908) 298-7482
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Respectfully submitted,

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Attorney for Applicants
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Express Mail Label:

PTO/SB/17 (12-04)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**
For FY 2005☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 200.00)

Complete if Known

Application Number	09/967223
Filing Date	09/28/2001
First Named Inventor	LEE, Seju
Examiner Name	Webman, Edward J.
Art Unit	1616
Attorney Docket No.	JB01337K

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 19-0365 Deposit Account Name: Schering-Plough Corporation

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description

	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=				
HP = highest number of total claims paid for, if greater than 20						
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)			
- 3 or HP =	x	=				
HP = highest number of independent claims paid for, if greater than 3						

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Fee for Application for Patent Term Adjustment Under 37 CFR 1.705

200.00

SUBMITTED BY

Signature	Registration No. (Attorney/Agent) 37,848	Telephone 908-298-7482
Name (Print/Type) Melodie W. Henderson		Date January 5, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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